



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/270,141	03/16/1999	GARY D. FOSTER	SMQ-011	2096
959	7590	03/21/2005	EXAMINER	
LAHIVE & COCKFIELD, LLP. 28 STATE STREET BOSTON, MA 02109			INGBERG, TODD D	
			ART UNIT	PAPER NUMBER
			2124	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/270,141

Applicant(s)

FOSTER, GARY D.

Examiner

Todd Ingberg

Art Unit

2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,8-12,14-17,19,20,22,23,38-44 and 53-58 is/are pending in the application.
- 4a) Of the above claim(s) 3,4,6,7,13,18,21,24-37 and 45-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8-12,14-17,19,20,22,23,38-44 and 53-58 is/are rejected.
- 7) ☒ Claim(s) 54,58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION**Claims Status**

Claims cancelled 3, 4, 6, 7, 13, 18, 21, 24-29 and 45- 52
Claims withdrawn 30-34
Claims examined 1, 2, 5, 8 – 12, 14-17, 19-20, 22, 23, 38-44 and 53-58

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings of March 16, 199 are informal. Paper Number 5 contained a PTO-948. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 2, 5, 8 – 12, 14-17, 19-20, 22, 23, 38-44 and 53-58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims fail to distinguish the invention as being performed on a computer. The claims in the broadest reasonable sense can be interpreted as being a manual process. The claims are not deemed *tangible* (State Street). The Examiner has provided one possible way how to amend claim 1 to overcome the rejection. Similar amendment for the remaining independent claims is required.

Claim 1

In a distributed system stored on a computer readable medium and executing on a computer having a publishing master and a client system, a method comprising:
providing at the publishing master art index of available packages for loading, said

Art Unit: 2124

packages being one of a computer program and patch for a computer program;
storing at the client system data that identifies packages to which the client system subscribes;
programmatically accessing the index on behalf of the client system to identify at least one selected package for loading at the client system, said selecting using the information identifying packages that may be loaded at the client system, and the, data that identifies packages to which the client system subscribes, said programmatic accessing occurring without user-participation; and
loading the selected package at the client system, said package being received from the publishing master in response to a request from said client system.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 8 – 12, 14-17, 19-20, 22, 23, 38-44 and 55-57 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN # 6,557,054 **Reisman** filed May 31, 1994.

this reference must be taken as a whole. the Patent has too many potential citings to the claimed invention to list them all.

Claim 1

In a distributed system having a publishing master and a client system, a method comprising:
providing at the publishing master art index of available packages for loading, said packages being one of a computer program and patch for a computer program ;
storing at the client system data that identifies packages to which the client system subscribes;
programmatically accessing the index on behalf of the client system to identify at least one selected package for loading at the client system, said selecting using the information identifying packages that may be loaded at the client system, and the, data that identifies packages to which the client system subscribes, said programmatic accessing occurring without user-participation; and
loading the selected package at the client system, said package being received from the publishing master in response to a request from said client system.

Art Unit: 2124

Examiner's Response

Reisman anticipates a publishing master and a client system providing at the publishing master art index of available packages for loading packages being one of a computer program and patch for a computer program (Figure 1 #16 Product information (ROM) and #12 and #32 the database with index to products) storing at the client system data that identifies packages to which the client system subscribes; (Col 5 lines 20 – 30 – subset of different products that are installed on that user station) ; programmatically accessing the index on behalf of the client system to identify at least one selected package for loading at the client system (Abstract) said selecting using the information identifying packages that may be loaded at the client system, and the, data that identifies packages to which the client system subscribes, said programmatic accessing occurring without user-participation (Col 8, lines 60-65 – schedule to automate update process), loading the selected package at the client system, said package being received from the publishing master in response to a request from said client system. (Figure 6), generating a list of packages that may be installed at the client to which the client wants to describe and which have not already been installed at the client. (Title and Col 5 lines 20 – 30 – subset of different products that are installed on that user station) , wherein each subscription list identifies the packages to which the client system subscribes (Col 5 lines 20 – 30 – subset of different products that are installed on that user station).

Claim Limitations treated as Data

Abstract – updates can be whole version, one patch or multiple patches or software or documents. The claim limitation is treated as data and not given patentable weight.

Claim 2

The method of claim 1 wherein the selected package is loaded without registration of the client system with the publishing master.

Examiner's Response

Figure 2 First time called not registered if not first time called.

Claim 5

The method of claim 1, comprising the further step of storing the selected package at a repository that is separate from the publishing master, said package being retrieved from said repository prior to loading. Figure 1 #16 Product information (ROM) and #12 and #32 the database with index to products.

Claim 8

The method claim 1 wherein the publishing master is a web server.

Examiner's Response

Figure 9 shows the server and network environment for the electronic publisher – col 5 lines 25 – 30 mentions the network is a non-proprietary network.

Claim 53

The method of claim 1 wherein said method of selecting a package for loading at the client system comprises the further step of: comparing at least one of a version number and a release date for a package to which the client subscribes and which is loaded at the client system to at

Art Unit: 2124

least one of a version number and a release date of at least one of said packages identified as available for loading at the publishing master.

Examiner's Response

Col 44 lines 15 – 25 “version number” and “date”.

Claim 9

In a distributed system having a server and a client, a method comprising: storing at the server information identifying packages that may be installed at The client. said packages being one of a computer program and patch for a computer program; storing at the client data that identifies packages to which the client subscribes; and using the information identifying packages that may be installed at the client and the data that identifies packages to which the client subscribes to determine which of the packages are to be installed at the client, said determining comprising generating a list of packages that may be installed at the client to which the client wants to describe and which have not already been installed at the client. See the rejection for claim 1.

Claim 10

The method of claim 9 further comprising installing the determined packages at the client, said package being received from the server in response to a request from said client. Figures 8 and 9 show version comparator which is a determination.

Claim 11

The method of claim 9 further comprising providing data regarding what packages have already been installed at the client and using the data regarding what packages have already been installed in determining which of the packages are to be installed at the client. As per claim 10.

Claim 12

The method of claim 9 wherein the information identifying packages that may be installed at the client includes information identifying names and version of the packages.

Examiner's Response

Col 44 lines 15 – 25 “version number” and “date”

Claim 14

In a computer network having a server and a client, a method comprising the computer implemented steps of:

- (a) providing at the server data regarding what packages are available for installation, said packages being one of a computer program and patch for a computer program;
- (b) providing at the client an itemization of packages to which the client subscribes; and
- (c) with the client, repeating multiple times the following steps;
 - (i) programmatically accessing the data regarding what packages are available and accessing the itemization of packages to which the client subscribes to determine what selected packages to install, said programmatic accessing occurring without user-participation; and
 - (ii) installing selected packages at the client, said package being received from the server in response to a request from said client. See the rejection for claim 1.

Art Unit: 2124

Claim 15

The method of claim 14 wherein steps (c)(i) and (c)(ii) are repeated at periodic intervals.

Examiner's Response

Col 8, lines 60-65 – schedule to automate update process.

Claim 16

The method of claim 14 wherein steps (c)(i) and (c)(ii) are repeated upon demand by a user.

See the rejection for claim 1.

Claim 17

In a distributed system having a publishing master, at least one repository for holding packages and multiple client computer systems, said packages being at least one of a computer program and patch for a computer program a method comprising providing a package index at the publishing master, wherein the package index identifies names and versions of packages stored on the repository; providing a subscription list at each client system, wherein each subscription list identifies the packages to which the client system subscribes; and for each client system, at periodic intervals:

(i) programmatically identifying selected packages to be loaded by referencing the package index and the subscription list; said programmatic identifying occurring without user-participation; and

(ii) loading the selected packages at the client system, said package being received from the publishing master in response to a request from said client system.

See the rejection for claim 1.

Claim 19

The method of claim 17 wherein at least one of the packages that is loaded includes multiple patches.

Examiner's Response

Abstract – updates can be whole version, one patch or multiple patches. The claim limitation is treated as data and not given patentable weight.

Claim 20

A distributed system, comprising: a publishing master holding an index of packages that are available for installation, said packages being at least one of a computer program and patch for a computer program; a repository for storing the packages that are available for installation; and a client computer system for identifying selected packages among the packages indexed by the index of packages, obtaining the selected packages from the repository and installing the selected packages at the client computer system said identifying using information from a client-maintained subscription list of packages to which the client computer system subscribes, said obtaining of the selected packages being received from the publishing master occurring in response to a request from said client system. See the rejection for claim 1.

Claim 22

Art Unit: 2124

The distributed computer system of claim 20 further comprising an additional repository for storing at least a portion of the packages that are available for installation.

Examiner's Response

Col 5 lines 20 – 30 – subset of different products that are installed on that user station. This section also teaches the server as having the complete set.

Claim 23

The distributed computer system of claim 20 further comprising an additional client computer system for identifying a subset of the packages indexed by the index of packages, obtaining the subset of packages from repository and installing the subset of packages at the additional client computer system.

Examiner's Response

Col 5 lines 20 – 30 – subset of different products that are installed on that user station.

Claim 38

In a distributed system having a publishing master with an index of packages available for installation and a client system, said packages being at least one of a computer program and patch for a computer program, a method performed by the client system comprising: requesting at least a portion of the index from the publishing master; receiving at least a portion of the index from the publishing master in response to the request; identifying packages that are already installed at the client; processing the received portion of the index to identify selected package to install; said processing using information about the identified packages already installed on the client system; and obtaining a copy of the selected package in response to a request from the client system. See the rejection for claim 1.

Claim 39

The method of claim 38 further comprising the step of installing the package at the client system.

Examiner's Response

Col 18 lines 30 – 35 “during the install process.”

Claim 40

The method of claim 38 wherein the selected package is obtained without registration of the client system with the publishing master. See the rejection for claim 2.

Claim 41

The method of claim 38 wherein the selected package contains a patch.

Examiner's Response

Abstract – updates can be whole version, one patch or multiple patches. The claim limitation is treated as data and not given patentable weight.

Claim 42

The method of claim 38 wherein the selected package contains a document.

Examiner's Response

Art Unit: 2124

Abstract – updates can be whole version, one patch or multiple patches. The claim limitation is treated as data and not given patentable weight.

Claim 43

In a distributed system having a publishing master having an index of packages available for installation and a client system, said packages being at least one of a computer program and patch for a computer program, a computer-readable medium holding computer-executable instructions for performing a method performed by the client system comprising: requesting at least a portion of the index from the publishing master; receiving at least a portion of the index from the publishing master in response to the request; identifying packages that are already installed at the client; processing the received portion of the index to identify a selected package to install; said processing using information about the identified packages already installed on the client; and obtaining a copy of the selected package in response to a request from the client. As per claim 10.

Claim 44

The storage medium of claim 43 wherein the selected package is obtained without registration of the client system with the publishing master. See the rejection for claim 2.

Claim 55

In a distributed system having a publishing master and a client system, a medium holding executable steps for a method, said method comprising: providing at the publishing master an index of available packages for loading, said packages being one of a computer program and patch for a computer program; storing at the client system data that identifies packages to which the client system subscribes; programmatically accessing the index on behalf of the client system to identify at least one selected package for loading at the client system, said selecting using the information identifying packages that may be loaded at the client system, and the data that identifies packages to which the client system subscribes, said programmatic accessing occurring without user-participation; and loading the selected package at the client system, said package being received from the publishing master in response to a request. See the rejection for claim 1.

Claim 56

The medium of claim 55 wherein the selected package is loaded without registration of the client system with the publishing master. See the rejection for claim 2.

Claim 57

The medium of claim 55 wherein said method of selecting a package for loading at the client system comprises the further step of comparing at least one of version number and a release date for a package to which the client subscribes and which is loaded at the client system to at least one of a version number and a release date of at least one of said packages identified as available for loading at the publishing master

Examiner's Response

Col 44 lines 15 – 25 “version number” and “date”

Allowable Subject Matter

5. Claims 54 and 58 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 54

The method of claim 1 wherein said method of selecting a package for loading at the client system comprises the further step of: providing an identifier for each package listed as available for loading at said publishing toaster, said identifier indicating that an associated package is one of a required update and an optional update, said required update indicated as necessary for one of any client system without said package installed and a client system having one of said package installed bearing an earlier release date and package installed bearing a lower version number, said optional update indicated as necessary for one of any client system subscribing to said package and which does not have said package installed and a client system subscribing to the package and having one of said package installed bearing an earlier release date and package installed bearing a lower version number.

Claim 58

The medium of claim 55 wherein said method of selecting a package for loading at the client system comprises the further step of providing an identifier for each package listed as available for loading at said publishing master, said identifier indicating that an associated package is one of a required update and an optional update, said required update indicated as necessary for one of any client system without said package installed and a client system having one of said package installed bearing an earlier release date and package installed bearing a lower version number, said optional update indicated as necessary for one of any client system subscribing to said package and which does not have said package installed and a client system subscribing to the package and having one of said package installed bearing an earlier release date and package installed bearing a lower version number.

The Examiner deems the following limitations allowable.

"said optional update indicated as necessary for one of any client system subscribing to said package and which does not have said package installed and a client system subscribing to the package and having one of said package installed bearing an earlier release date and package installed bearing a lower version number."

The Examiner finds this limitation counter intuitive. Most vendors would not elect to distribute outdated products because they do not reflect the latest technology of the company, nor

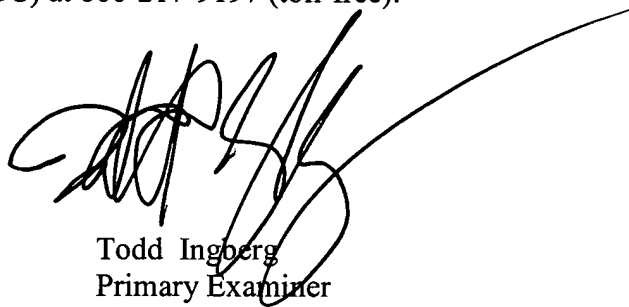
the most current patch level. Also, support for older versions is often phased out. The willingness to distribute an outdate version implies incurring additional support costs.

Correspondence

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The examiner can normally be reached on during the work week..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Todd Ingberg
Primary Examiner
Art Unit 2124